EFFORTS TO OBTAIN A CODE OF LAWS FOR THE DISTRICT OF COLUMBIA.

By Mr. Justice Walter S. Cox.

Read before the Society December 5, 1898.

I have been requested to give some account of the efforts made, in or out of Congress, to procure and establish a code of laws for the District of Columbia.

That part of what was designated in some of the old statutes as the Territory of Columbia, lying in the State of Maryland, and that part lying within Virginia, having been respectively ceded by those States to the United States, Congress commenced its legislation, in relation to the District, by an act of February 27, 1801, which provided, first, that the laws of Virginia, "as they now exist," shall be and continue in force in that part of the District of Columbia which was ceded by said State to the United States and by them accepted for the permanent seat of government; and that the laws of the State of Maryland, "as they now exist," shall be and continue in force in that part of the District which was ceded by that State to the United States and accepted as aforesaid, and that said District shall be divided into two counties; one county shall contain all that part which lies on the east side of the river Potomac and shall be called the county of Washington; the other county shall contain all that part of the District which lies on the west side of the said river and shall be called the county of Alexandria.

At the same time, the act created a court, to be called the Circuit Court of the District of Columbia, which

was to hold several sessions annually, in each of the two counties. It also created an Orphans' Court for each county.

Thus the anomalous condition was presented of two contiguous counties, under the same legislative jurisdiction, governed by different systems of statutory law, to be administered by the same court.

One would naturally expect that Congress would speedily take steps to remedy this state of affairs and enact a uniform system of law for the entire District. But such was not the case. On the contrary, what little legislation took place for years afterward only recognized and perpetuated the distinction between the counties, by sporadic measures affecting them separately.

For some sixteen years following, the laws passed by Congress affecting the District related principally to the charters of Washington, Georgetown, and Alexandria, to the militia, to insolvent debtors and to the incorporation of banks, improvement companies and other private organizations, and very little to the improvement of judicial proceedings, and not until the year 1816 did Congress seem to awake to the importance of a general and uniform amelioration of existing laws.

On the 29th of April of that year an act was passed authorizing the judges of the Circuit Court and the District Attorney to prepare a code of laws for the District. The judges at that time were Judges Cranch, Morsell and Thurston. Judge Cranch remained on the bench of that court, as its Chief Judge, for about half a century. Judge Thurston held his office for a somewhat shorter time, and Judge Morsell held his until the abolition of the court in 1863. The District Attorney at the time was Walker Jones, one of the most eminent lawyers of his day, and the compeer of Pinkney, Wert and Webster at the bar of the Supreme Court.

In November, 1818, Judge Cranch reported to Congress a code prepared by himself, and stated that the other gentlemen named in the act of Congress, in consequence of their engagements, had not been able to assist him.

In this code he grouped together, apparently without any system, the different statutes of Virginia and Maryland and the English statutes supposed to have been in force in Maryland, which he supposed would be properly applicable to the whole District, with all their antiquated phraseology and long-since obsolete remedial provisions, giving marginal references indicating to which class each statute belonged. The statutes are given as separate laws, each with a separate enacting clause. Occasionally appears one which seems to be original and must have been devised by Judge Cranch himself, but these are few and unimportant. There was no attempt by him to introduce any material changes in judicial proceedings and remedies; and, in fact, the spirit of reform and improvement, in this direction, can hardly be said to have been aroused, at this early period in our history, in the country generally. This code, therefore, if it had been adopted, would have advanced us very little. It was, however, not acted upon by Congress, and the whole subject was allowed to sleep for some twelve years, when a committee of the House of Representatives, who had been directed to inquire into the expediency of providing for the appointment of commissioners to digest and form a code of civil and criminal law for the District, etc., made a report.

They had addressed a circular, with a number of questions, to sundry citizens and members of the bar, and return with their report the answers of the persons so addressed. Among these were Judge Cranch, Messrs. Richard S. Coke, Joseph H. Bradley, Francis Key, long

the District Attorney in General Jackson's time, and the well-known author of the "Star Spangled Banner," and James Dunlop, afterward Chief Justice of the Circuit Court until its abolition.

The committee go into the history of the cession of the District to the United States and express regret that it ever was withdrawn from the legislative jurisdiction of the States. They dwell on the fact that even at that date Congress had not made many essential changes in the general laws of the District nor in their administration; that the laws then in force had been accumulating for generations, many of the sanctions of which were only suited for barbarous ages, which they illustrated by reference to the criminal statutes of Maryland prescribing capital punishment for a dozen offenses, such as arson, breaking into a shop and stealing five shillings' worth of goods, stealing a boat, or the case of a negro burning tobacco or stealing a horse, etc. They dwell on the complicated character of the business of the Circuit Court, causing interminable delays in the administration of justice, the great abuses in the practice of justices of the peace, the absence of laws to restrain gaming, the sale of ardent spirits and various other evils unnecessary to mention. They discuss the question whether the District can be retroceded to the States of Virginia and Maryland and whether a local legislature can be established, but conclude that the best remedy which they can recommend is the appointment of capable and efficient commissioners authorized to prepare and report to Congress such a code of laws as will be best suited to the wants, habits and feelings of the people and which shall make little innovation upon the common and statute law and be rather a revision than a new code. They also suggest the propriety of allowing the District to be represented by a

Delegate in the House of Representatives, in the same manner as the Territories.

In pursuance of this report, a joint committee of the two Houses was appointed to prepare and report a system of law, civil and criminal, for the District, and this committee did report such a system at the first session of the Twenty-second Congress, in February, A. D. 1832.

In this report they say they are satisfied from their inquiries and from previous documents that the inhabitants of the District cherish an affection for the great body of the law under which they have lived, and deprecate any attempt to form an entire new system—which is not a mere prejudice, but an inclination founded in nature and reason. The report of the committee on the District which led to their appointment, they say, recommended that there should be as little innovation upon the common and statute law of the District as might be consistent with a complete, simple and uniform system, and the like principle seems in a great degree to have directed the previous compilation prepared by the Chief Justice of the District under the order of Congress. Looking to these sources for a sound exposition of their duty and authority, they say that they have followed the leading principles of the common law, have embodied as much of the laws of Virginia and Maryland as could be blended and harmonized, selecting the best where they could not be united, adding such improvements as either State had made since the cession, and rendering the whole consistent, uniform and adapted to the entire District, and correcting the vices, as far as possible, of the existing legislation, and deriving aid from the code heretofore prepared by Judge Cranch and the criminal code proposed to Congress by Mr. Edward Livingston.

The proposed code puts into statutory shape the com-

mon law rules of practice which then prevailed in the two States and the ordinary rules of practice in equity causes, and introduced a few changes, in the way of improvement, in the laws regulating private rights, but a considerable part of it is taken up with matters now obsolete, such as holding to bail and imprisonment for debt, a very elaborate and unwieldy judicial organization, regulations respecting slaves and free negroes, etc. A remarkable feature of it is, first: that it contains no law of descent, and, next, that out of six hundred and eighty-five pages, three hundred and ninety-five—largely more than one-half—are taken up with a penal code, code of criminal procedure and code of prison discipline, which seem to have been taken from the work of Edward Livingston before referred to. His introduction to said work is printed with the report of the committee.

Livingston was born in New York in 1764, became a prominent member of the bar, and served several terms in Congress. After the acquisition of Louisiana, he removed in 1804 to that State, where he became conspicuous, both politically and professionally. He was elected to the Senate from Louisiana, became a member of General Jackson's Cabinet, and was sent as Minister to France. He acquired considerable celebrity as master of the various systems of law in the civilized world. He prepared a system of penal law for the State of Louisiana, a system of penal law for the United States (in 1828), and complete works on criminal jurisprudence. His code, prepared for Louisiana and submitted to its legislature in 1826, was not directly accepted, but it was favorably received by the legal profession in this country and in Europe, and greatly added to his fame. It is said to have influenced legislation in several countries and parts of it were adopted entirely in Guate-

mala. The one considered and substantially adopted by the committee was the one he had submitted to Congress. It is very detailed and minute, and abounds in forms of indictment for every conceivable offense. When proposed for the United States generally, it does not seem to have received favorable consideration, and when thus embodied in a code for the District, it met with as little favor, for there seems to have been no Congressional action at all upon the report of this committee.

I think there was a good deal of truth in the view taken by the committee as to the sentiments of the people of the District and their preference for the legal system to which they had been accustomed and their indisposition to welcome any great novelties, of which I think a proof was furnished somewhat later on. The committee were, therefore, quite conservative in the system which they proposed, an illustration of which I will give by a reference to one or two old rules of the common law. By these, an estate of freehold, i. e., an estate for life, or of inheritance, could not be conveyed without the feudal ceremonial of livery of seisin. This consisted of going upon the property and in the presence of witnesses, delivering a turf or clod of earth or the hasp of a door to the grantee, in the name of the property intended to be conveyed, and this ceremony was held to operate immediately to transfer the legal title to real estate. For this reason, a freehold estate could not be conveyed, to begin at a future day, and the only way in which such an estate could be created, was to create, first, a preceding estate to begin immediately, so that the livery of seisin should be given to the owner of that for the benefit of both. It was held that the future estate was so dependent upon the immediate estate that if it was contingent in its character, the de-

struction or surrender of the immediate estate would result in the destruction of the other. The act of Assembly of Maryland of 1715 providing for the recording of deeds made livery of seisin unnecessary, and it never has existed in the District, and although this is true, the rules of law above mentioned, growing out of the necessity of livery have remained unchanged, and even at this day, in this District, one cannot convey a freehold to commence in future, and this, although every code attempting to be put into law, except the one I am now considering, has contained a change in the law in these respects. But this proposed code provides for the proving of livery of seisin and the acknowledgment of it, equally with that of deeds, in certain cases. It must have adopted the idea from the old laws of Virginia.

For a long time there was no separate publication of laws relating to the District, but one was compelled to search in the statutes at large for such legislation.

One or two private efforts were made to remedy this inconvenience. In 1823 Mr. Samuel Burch, at one time I believe Secretary of the Senate, published a digest of the laws of the corporation of Washington, and, in an appendix, published the laws of Maryland and Virginia relating to the cities of Washington, Georgetown and Alexandria and the cession of the counties to the United States, and the acts of Congress relating to the District down to that date.

In 1831 Mr. Wm. A. Davis, of Washington, published a collection of the acts of Congress in relation to the District, from July, 1790, to March, 1831, and of the acts of Maryland and Virginia relating to the cession of the District. He states, in his preface, that the acts of Congress in relation to District affairs had been excluded from the general edition of the laws of the United States published under authority of Congress a few

years previously and it had been difficult to ascertain the course of legislation respecting the District. He refers also to laws of Maryland and Virginia in relation to the District, not to be found in subsequent editions or collections of their laws, and therefore difficult to be got at, but which it is very important to compile for convenience of reference, both for Congress and the people of the District. This collection gives all the acts of incorporation, amendments to charters of the cities, as well as all private charters and all the legislation affecting private rights and remedies down to the date of its publication. Neither this nor Burch's digest had any authentic or official character or received any recognition from Congress; but inasmuch as we had no collection of laws so recognized, these publications were of great utility in legal proceedings and were relied on as correct expositions of the laws in force, and were fully cited in the courts as the law of the District, whenever questions arose as to the meaning or effect of statute law.

Between 1831 and 1855 efforts were made in Congress to have commissioners appointed to prepare a code for the District, but it seemed impossible to arouse a sufficient interest in the subject in Congress to procure any action. In 1846 the county of Alexandria was retroceded to Virginia and the District thus reduced in extent. In 1855 an act was passed which authorized the appointment by the President of a commission to revise, simplify, digest and codify the laws of the District. The author of this bill was Mr. Henry May, then a Member from Baltimore. He had been a citizen of Washington and a prominent member of our bar and was acquainted with the defects of our system. It was just about this time, too, as the dates of laws in Maryland indicate, that reforms in the old system common to Maryland and the District were being agitated in that State.

Mr. Robert Ould and Mr. Wm. B. Cross were appointed commissioners for the object. Mr. Ould was a native of Georgetown, who had been a member of the bar for some ten years. He was District Attorney afterward under Mr. Buchanan, and, after the commencement of the Civil War, went South and remained in Richmond until his death. Mr. Cross was also a practitioner at our bar, the son of Col. Cross, one of the first victims of the Mexican War.

They completed a code in 1857. The law authorizing it required it to be submitted to a popular vote, and Mr. Buchanan ordered such vote to be taken on the 15th day of February, 1858. The result of this vote just illustrated what I before referred to, viz., the disinclination of the people of the District to welcome fundamental change and novelties in their system of law.

This code abounded in these features: it swept away the whole course of common law pleading in which the whole bar had been educated and trained, and substituted for it a system of informal complaints and answers which must have been borrowed from some one of the radical new States, all which was utterly repugnant to the tastes of the legal profession here. It made changes in the nature of estates, abolishing the rules growing out of the necessity of livery of seisin, which would have been a very useful change. It introduced a law of divorce which was very contrary to the public sentiment at that time. It introduced some very useful reformations as we would consider them now, but they were entirely in conflict with the tastes and sentiments of the lawyers trained in the old common law. It was not free also from some glaring mistakes. For instance, it declared that law should lie in grant as well as in livery, which was equivalent to saying that it might be conveyed either by deed or the obsolete formality of

livery of seisin. It also declared that estates tail might be created as theretofore, which had been virtually obsolete for at least half a century. It is no wonder, therefore, that when a vote was taken on the code, only 1,138 were cast in favor of it, and 3,110 against it.

In 1862 a bill was passed authorizing the President to appoint three suitable persons to codify the laws, who were to be confirmed by the Senate. Mr. Lincoln nominated Messrs. Richard S. Coxe, John A Wells and Philip R. Fendall to the office, but Congress adjourned before the nomination could be acted upon.

The subject was revived, however, in the act to reorganize the courts of the District, which was passed in 1863, and which prescribed that the President should appoint a suitable person to revise and codify the laws. The President appointed for this purpose Mr. Return J. Meigs, who was the clerk of the newly-established Supreme Court of the District. Mr. Meigs was an old Tennessee lawyer, thoroughly trained in the old common law, and very well qualified for the task assigned him. I have been unable to find a copy of a code prepared by him, but I understand from his family that it was a small affair, of limited scope, consisting of some two hundred pages only, and very few copies were printed. No action was had upon it in Congress.

At the first session of the Thirty-eighth Congress a resolution was passed authorizing the District Committees of the two Houses to revise the code prepared in pursuance of the act of 1855. The matter, however, dragged along and nothing further was heard of it.

In 1872 the Legislative Assembly of the District passed an act under which George P. Fisher, one of the judges of the Supreme Court, D. C., and Hugh Caperton, Samuel L. Phillips, E. C. Ingersoll and R. D. Mussey, all members of our bar, prepared a report on the stat-

utes in force in the District. It commences with the Declaration of Independence, the Articles of Confederation and Constitution of the United States, and then gives the acts of Maryland and Virginia relating to the cession of the District. It gives the act of Congress establishing the District Territorial government and the acts of Congress relating to District affairs and acts of the District Legislature, without any distinction between them, so that it is impossible to tell what is their authority. It apears to include a good deal of the legislation of the District which is not of a municipal character and which, therefore, according to a decision rendered by our court long ago, would not be constitutionally valid. When, however, it comes to treat of real estate and titles, it does embody some modern ideas, in advance of the old common law rules that I have before adverted to, which were evidently borrowed from the codes of some of the States and were not contained in any of the statutes in force in the District. It had no marginal notes indicating the source from which its varied provisions were derived, although it professed to be simply a compilation of existing statutes. It had no index or table of contents and was wholly unattractive in form. In December, 1872, Governor Cooke reported this code to the Speaker of the House of Representatives and it was placed on the files, but no action was had upon it.

In the fourth session of the Forty-fourth Congress, about 1877, a bill was reported in the Senate providing for a revision of the laws relating to the District, but it was recommitted, and nothing further was heard of it.

The advent of the Republicans to power, in 1861, made a great change in the affairs of the District, and between that date and the year 1874 there was more legislation relating directly to our affairs than there had been for half a century before.

Slavery was abolished, the old Circuit Court and Criminal Court were abolished and the present Supreme Court was established, modeled somewhat after the courts of New York, and a new judicial system was established, of which the principal author was a Senator from New York, without the least consultation with the people or the legal profession of the District, entirely foreign to our tastes and habits, and which it took us many years to understand. A general incorporation law was passed, the metropolitan police created, a new law as to limited partnerships introduced and divorces authorized, the rights of married women to control their own property recognized—a complete novelty—the Police Court established, the jurisdiction of justices of the peace increased, new punishments prescribed for crimes, and new enactments made as to judicial proceedings, as, for instance, with reference to actions of replevin, and the defenses of set-off, usury, etc., and, most important of all, a Territorial government for the District was created and the old corporations of Washington and Georgetown and the old Levy Court of the county were abolished, except for the purpose of enforcing against them existing obligations.

In June, 1866, an act was passed authorizing the President to appoint three commissioners to revise and bring together all the statutes and parts of statutes which ought to be brought together, omitting redundant or obsolete enactments, and making such alterations as may be necessary to reconcile contradictions, supply the omissions and mend the imperfections of the original text.

The act does not seem, in terms, to allude to the District of Columbia, or even embrace it.

Such commissioners were appointed and proceeded with their work, which was not completed for seven

years. Without having any express authority to do so, they made a separate revision and collection of the acts of Congress relating to the District, besides the collection of general statutes relating to the whole United States. Each collection was reported to Congress, to be approved and enacted into law. The concluding paragraphs of each virtually repeal every part of any act of Congress passed before December, 1873, which is not included in this collection, and the whole is enacted into law, as the body of the statute law of the United States, under the title of "Revised Statutes," as of the date June 22, 1874.

The laws relating to the District begin with the one establishing the Territorial government, of Feb. 21, 1871, and the whole collection occupies only one hundred and forty-nine pages in the authorized publication. This is the first collection of statute law that ever received Congressional approbation. Every law previously passed was an individual act, called for by some emergency, or supposed so to be, without the least consideration of its consistency with other existing laws, or its fitness to be part of a system.

But this collection of Revised Statutes in no sense deserves the name of a code. In the first place, it does not even purport to give or contain all the statutory law in force in the District. The old British statutes which were in force in Maryland at the time of the cession of the District and the Maryland statutes of over a century, also in force in the territory ceded, and which were expressly continued in force, in general terms, by the act of Congress assuming jurisdiction over the District, of Feb. 27, 1801, are not included in this collection or even alluded to. The general collection might perhaps be considered, in a limited sense, as a code for the United States, as it embraced all the laws affecting the

whole United States, within the constitutional legislative jurisdiction of Congress, but there could be no complete code for the entire United States, because the subjects which would be proper to be regulated by a code in the States are entirely outside the legislative authority of Congress. But the collection of the statutes in force in the District did not profess or pretend to provide for such subjects here, even by re-enacting laws already in force. And, in addition to this, there was a total failure to introduce any new features in the way of reform or improvement, and those changes in the law which were embraced in the proposed codes that I have already referred to were entirely wanting.

It is well known that in the very same year in which this collection was published by authority of Congress, containing the law establishing the territorial government of the District, an act was passed abolishing that government and establishing a Board of Commissioners for governing, temporarily, the financial affairs of the District.

In 1878 the present permanent form of government for the District was established, by act of June 11, of that year, and this act provided that the Commissioners to be appointed thereunder should report a draft of such additional laws, or amendments to existing laws as, in their opinion, are necessary for the harmonious working of the system thereby adopted. And there was an appropriation in March, 1879, for that object, among those for the civil expenses of the government.

In December, 1879, Mr. Dent, in the name of the Commissioners, of whom he was the President, reported to the Senate a code of law and procedure for the District which had been prepared by Mr. Edward Chase Ingersoll, a member of the bar of our court, under the direction, as it was said, of Mr. N. G. Riddle, then Attorney

for the District. Mr. Ingersoll was a member of our bar of no special prominence, but he certainly exhibited remarkable industry in the preparation of this code. It was, however, a very singular production. It appeared to be an effort to codify the whole body of the common law, and contained one treatise after another of the most abstract definitions and propositions. It starts out with a definition of law as "the solemn expression of the will of the sovereignty." It is, first, a civil code of law and then a code of procedure. The last chapter of the first part is made up entirely of maxims of jurisprudence, such as: "When the reason of a rule ceases, so should the rule itself cease;" "One must so use his own rights as not to infringe upon the rights of others;" "No one can take advantage of his own wrong;" "No one should suffer by the act of another;" "For every wrong there is a remedy;" "The law never requires impossibilities;" "The law disregards trifles;" and the like, and, in another part, there is a regular common law treatise on the law of agency, partnership, insurance, guaranty, liens, mortgages and negotiable instruments. It resembles an elementary work on law, such as would be put into the hands of students. In some places there are valuable new provisions taken from the laws of Massachusetts and New York and the code of Maryland, but they are so overlaid with the kind of matter that I have alluded to, that it is a task to search them out. This is not the style in which a code should be prepared. It should consist of practical enactments, concise and brief. Dudley Field, of New York, prepared a code for that State which professed to embody the whole common law. It was not favorably received and proved to be wholly useless. The code prepared by Mr. Ingersoll met with a similar fate. It was placed on file, but no action was taken upon it.

At the second session of the Forty-sixth Congress the House District Committee reported a bill to revise the acts of Congress relating to the District, and the acts of the Corporation and the Levy Court. It was passed in the House and reported in the Senate, but did not pass.

In the Forty-seventh Congress Mr. Conners introduced a bill in the House to establish a municipal code, but it did not pass. A similar bill was introduced in the Senate, but no action was taken on it.

Senator Cameron, of Wisconsin, introduced a bill to compile and revise the statutes relating to the District, but no action was had on it.

In the first session of the Forty-seventh Congress Mr. McComas, now one of the Justices of the Supreme Court, D. C., introduced a bill in the House to provide for a criminal code for the District and to appoint a person to prepare it. It was passed at the next session and was reported by the Senate Committee on the District and placed on the Calendar, and that was the last of it.

In the Forty-ninth Congress Mr. Ingalls introduced a bill in the Senate to establish a municipal code, but no action was taken on it.

In the same Congress Mr. McComas again introduced his bill, which had failed at the previous session, but again no action was taken.

At the second session of the Forty-ninth Congress Mr. Hemphill, from the District Committee, introduced a bill providing for the compilation of the District laws by three commissioners. It passed the House, was reported in the Senate in the middle of February, 1887, but Congress adjourned before any action could be taken.

All this shows a remarkable interest in this subject on the part of the friends of the District in Congress,

and at the same time a remarkable indifference in Congress, as the legislature of the District, about bringing its laws up to the standard recognized among the States as suitable for the progress of the age and the advanced conditions of business dealings.

In the Fiftieth Congress Mr. Hemphill, from the House Committee on the District, reported a bill providing that the Supreme Court of the District should appoint two persons to compile, arrange and classify, with a proper index, all statutes and parts of statutes in force in the District, including acts of the second session of the Fiftieth Congress and relating to all such matters as would come properly within the scope of a civil and criminal code, the commissioners to receive a certain compensation upon the completion of the work and its approval by the court.

The court appointed Mr. Wm. Stone Abert and Mr. B. F. Lovejoy commissioners, but Mr. Lovejoy died shortly afterward and Mr. Reginald Fendall was appointed in his place. Mr. Fendall, however, took no part in the work and it was prosecuted entirely by Mr. Abert. He pursued this work with marvelous patience and industry. It covered a vast field and was not completed until 1894. Mr. Abert included in his compilation the old English statutes in force in the Colonies, including Maryland, or supposed by him to be so, from Magna-Charta to the 13th of George III., in the year 1773, and all the statutes of Maryland from the year 1704 to Feb. 27, 1801, which had not been repealed and were declared to be in force in the District by the act of Congress of the last date, and the revised acts of Congress before referred to, re-enacted in 1874, and also the acts of the Legislative Assembly of the District passed during its brief existence from June 2, 1871, to June 26, 1873, which were supposed to continue in force. The

work abounds in marginal references to the various statutes and also to judicial decisions upon their meaning and effect.

The old English statutes and some of the old Maryland statutes abound in antiquated English and redundant verbiage, which it was unnecessary to re-enact, and many provisions in them are now inapplicable and obsolete, by reason of changes in the practice of the courts and social and political conditions, but it was historically correct to print the entire statutes containing them. The compilation was thereby rendered quite voluminous, but it is invaluable as a collection of existing law and was extremely useful to me in a work which I undertook and will speak of presently. It did not, however, profess to introduce anything new and cannot, therefore, be treated as a code, in the sense in which I employ that term. It was approved by the court, as the statute required, simply because it was considered a correct compilation, and no errors were pointed out, but it never received any recognition, approval or indorsement by Congress, like the Revised Statutes of 1874; so that it is nothing more, as authority, than the work of a private compiler of existing laws, and is not re-enacted by Congress as the existing law. Of course, Congress could not delegate to the court authority to pass a law, and the mere approval of the work, by the court, did not make the compilation a law or a code of laws.

I am not aware of any other efforts in Congress to promote the passage of a code of laws for the District.

In November, 1895, the Board of Trade of Washington extended an invitation to me to undertake the preparation of a code based upon the existing code of Maryland. The Bar Association seconded this application.

I did not see how such an undertaking was possible

to me at that time, burdened as I was with my judicial duties and the work of the Law School of Columbian University, but I accepted the invitation with the qualification that I could not do more than collect materials for dong the work at a future time when I might be entitled to retire from the bench of our court, which time would arrive in a year. I did not take that step in the fall of 1896, as I might have done, but determined to commence the work of preparing a code very gradually in the intervals between my other engagements.

I proceeded to examine not only the Maryland code, but also the code of Virginia and the laws of New York and Ohio, with a view to select from all of them what I might think it advisable to incorporate into our law. In framing a code I have retained all of the existing law which it seemed wise to adhere to, but have made many alterations in the common law, especially in the matter of practice, which were suggested by the examination of the laws I mention, or by my own experience. It is somewhat singular that until I had finished this work, I had never seen the several codes heretofore prepared, but they were furnished to me and have been examined by me since I was requested to prepare this paper. I have been somewhat surprised to find that several of them have somewhat anticipated me and contain some of the very novel provisions that I had adopted from codes in force in the States.

It appears, then, that five codes—those of Judge Cranch, the Congressional Committee of 1821, of Mr. Return J. Meigs, of Messrs. Fisher and others, and of Mr. Ingersoll—have been formally submitted to Congress, but simply ignored, and that prepared by Messrs. Ould and Cross was voted down by the citizens. This does not give much encouragement for new efforts, but there seems to be such an earnest desire now on the part

of the bar and the Board of Trade, which is a very influential representative of public sentiment in the District, that either at the present or the next session of Congress a favorable result may be hoped for.